

University of
California, Irvine
School of Law



2016

Experian/Jones Day Moot Court Finals

February 1, 2016

3:30 – 5:00 PM

University of California, Irvine

School of Law

Crystal Cove Auditorium

Acknowledgements

The UC Irvine School of Law Moot Court program is a student endeavor. It is a competition of the students, by the students, for the students. But it is supported, advised, funded, and bolstered by the generosity and wisdom of staff, professors, lawyers, firms, and judges. It simply could not be done without the support of this legal community.

Generous Contributors:

The founders of the program including Experian and Jones Day.

The 42 attorneys and state and federal judges and justices who judged 18 days of oral argument.

The 19 professors who graded stacks of competitors' Supreme Court briefs.

The 18 first-year law students who served as bailiffs.

The 3 circuit judges who presided over finals.

Special Thanks to:

Dean Erwin Chemerinsky and **Professor Rachel Croskery-Roberts**, for passing on the institutional memories necessary to run the program year after year.

Senator Joseph Dunn (Ret.), for his critical contribution to our practice rounds.

Stuart Miller, for his critical contribution to our oral argument rounds and the development of our score sheets.

Crissandra Flores, **Dean Elizabeth Schroeder**, and **Jannah Jones**, for making all things Moot Court happen.

Paul Hoffman and **Prof. Trilby Robinson-Dorn**, for training our students to be brief-writers and oral advocates.

Our students, who collectively put in thousands of hours researching and writing Supreme Court-level briefs and honing their craft of oral advocacy.

2015–2016 Finalists

SEMI-FINALISTS

Emile Ayoub
Remick Stahl

QUARTERFINALISTS

Sara Banco
Alexandra McIntosh
Ariela Rutkin-Becker
Robert Siko

TOP SIXTEEN FINALISTS

Jenaun Aboud
Shireen Ashtari
Crystal Caldera
Terence Desouza
Elizabeth Hercules-Paez
Rik Jeffrey
Stephanie Johnson
Robert K. Moddelmog

2015-2016 Experian/Jones Day Moot Court Board

Aaron Benmark, Yashina Burns, Judy Chin, Leigh Dickey, Lawrence Liu, Kellye Ng, Michael Olson, Ronald Park, Samantha Rodriguez, Jacqueline Shepherd, Elizabeth Tissot, and David Rutan

Presiding Judges

The Honorable Morgan Christen

Court of Appeals for the Ninth Circuit

The Honorable Jennifer Walker Elrod

Court of Appeals for the Fifth Circuit

The Honorable Patricia Ann Millett

Court of Appeals for the District of Columbia Circuit

Oral Argument Finalists

Brett Long

On behalf of Petitioner

Jiaxiao Zhang

On behalf of Respondent

Summary of the Case

Background

Laws preventing United States citizens from voting have always been contentious, as voting is a fundamental right. However, American voters have faced a long history of states passing facially neutral voting requirements that in effect restrict voting along the lines of race. In 1965, after the infamous Selma march led by Martin Luther King, Jr, Congress passed the Voting Rights Act to prevent voting restrictions on the basis of race or color.

Over the last decade, many states have passed restrictive voter identification laws (“voter ID” laws) requiring voters to present photo identification in order to vote. Critics of these laws suggest that these laws disproportionately affect minority, poor, elderly, and disabled voters, who often lack the means and necessary documentation to acquire a photo ID. Supporters of these laws claim the laws are simply designed to reduce fraud and encourage orderly elections. Multiple lawsuits have been brought nationwide challenging these laws on constitutional and statutory grounds. Courts across the country have split in evaluating both the constitutionality and legality of similar voter ID laws under the Fourteenth Amendment and Voting Rights Act.

The District Court Case of *Frank v. Walker*

This year’s moot court problem is based on *Frank v. Walker*, an actual Voter ID lawsuit. In 2011, the Wisconsin Legislature passed Wisconsin Act 23 (“Act 23”) requiring Wisconsin voters to present photo identification at the polls. Plaintiffs filed this

2015-2016 Competitors

Jenaun Aboud	Vinhcent Le
Andani Alcantara	Brett Long
Shireen Ashtari	Alexandra McIntosh
Emile Ayoub	Robert K. Moddelmog
Sara Banco	Itohan Okogbo
Crystal Caldera	Evan Ponec
Sabrina Cohn	Divya Prabhakar
Ian Deady	Stephanie Quartararo
Terence Desouza	Boanerges Rodriguez
Katherine Ells	Ariela Rutkin-Becker
Elizabeth Hercules-Paez	Robert Siko
Samuel Hyams	Nancy Sotomayor
Nicholas James	Remick Stahl
Rik D. Jeffery	Cristina Truong
Stephanie Johnson	Honieh Udenka
Jennifer Kim	Jiaxiao Zhang

Schedule of Events

Opening Remarks

Erwin Chemerinsky, *Dean and Distinguished Professor of Law,*
Raymond Pryke Professor of First Amendment Law

Welcoming of Presiding Judges

Oral Arguments

Brett Long, *for Petitioner*
Jiaxiao Zhang, *for Respondent*
Brett Long, *for Petitioner* (rebuttal)

Judicial Procession

Presentation of Best Brief Awards

Ronald Park, *President, Moot Court Board*
Prof. Rachel Croskery-Roberts, *Adviser, Moot Court Board*

Presentation of Best Advocate Honors

Presiding Judges

Closing Remarks

Dean Erwin Chemerinsky

Note from the Board:

You are cordially invited to join us for a light reception following the program outside the Crystal Cove Auditorium.

Frank v. Walker, Continued

lawsuit alleging Act 23 is a violation of the Fourteenth Amendment and Section 2 of the Voting Rights Act. The District Court found for plaintiffs on both counts, holding that the state's purported interests in implementing Act 23 did not justify the burdens on would-be voters. The court further held that Act 23 violates Section 2 of the Voting Rights Act's prohibition on voter qualifications or prerequisites that result in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.

The Seventh Circuit Reversed

The Seventh Circuit reversed the District Court's opinion on both counts, focusing on the case's similarity to Supreme Court case, *Crawford v. Marion County Election Board* 553 U.S. 181 (2008), in which the court upheld a similar voter ID requirement in Indiana. In *Crawford* the Supreme Court upheld a voter ID law in a 3-3-3 split decision with no solid majority. According to Judge Frank Easterbrook, who wrote the opinion in *Frank v. Walker*, the law upheld in *Crawford* was too similar to the law in Wisconsin to justify a different verdict under the Fourteenth Amendment. The Seventh Circuit further held that Section 2 of the Voting Rights Act did not invalidate the law. Competitors will have to distinguish the law and conditions in Wisconsin today from the law and conditions in Indiana. The Seventh Circuit declined to rehear the case *en banc*, in a 5-5 split decision over a vigorous dissent by Judge Richard Posner. The U.S. Supreme Court declined to consider this case further.

For the purpose of this Moot Court simulation, competitors were told to assume that the Supreme Court had granted *certiorari* and agreed to hear the case, and to write a brief asking the Supreme Court to either uphold or overturn the Seventh Circuit's decision. Competitors will argue *Frank v. Walker* before a panel of three distinguished United States Court of Appeals judges. They will address two issues: 1) whether Act

The Seventh Circuit Reverses, Continued

23 is unconstitutional under the Fourteenth Amendment; and
2) whether Act 23 violates Section 2 of the Voting Rights Act.

Issue One: Is Act 23 Unconstitutional Under the Fourteenth Amendment?

A state violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard.” *Harper v. Virginia Board of Elections*, 383 U.S. 663, at 666 (1966). However, elections require some regulation, and drawing the line between legitimate and illegitimate restrictions on the right to vote is not always easy. In *Anderson v. Celebrezze*, 460 U.S. 780 (1983), the Supreme Court held that when electoral regulations are reasonably related to voter qualifications, the restriction should be evaluated under a balancing approach. First, the court must consider the character and magnitude of the injury. Second, the court must identify and evaluate the interests put forward by the state. Finally, the court must consider the legitimacy and strength of those issues, and the extent to which those injuries make it necessary to burden the plaintiff’s rights. This balancing test is commonly referred to as the Anderson/Burdick Test.

Issue Two: Does Act 23 Violate Section 2 of the Voting Rights Act?

Section 2 of the Voting Rights Act prohibits any state from imposing a “voting qualification or prerequisite to voting” which “results in a denial or abridgement of the right of any citizen of the United States to vote on the basis of race or color.” 52 U.S.C. § 10301(a). A violation of this requirement is established if:

based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to

Issue Two, Continued

participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Courts have split as to how to evaluate this test in the context of voter ID laws. Some courts apply the nine “Senate” or *Gingles* Factors. Relevant factors include: (1) the extent of any history of official discrimination in the state that touched the right of the minority group to register, vote, or participate in the democratic process; (2) the extent to which the state has used voting practices in the past that enhance the opportunity for discrimination against the minority group; (3) the extent to which members of the minority group in the state bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; and (4) whether the policy underlying the state’s use of the voting qualification is tenuous.

Other courts, including the Seventh Circuit, have instead applied a two part test formulated in *Ohio State Conference of NAACP v. Husted*, 768 F.3d 524 (6th Cir. 2014) to determine whether discriminatory impact exists. First, the challenged “standard practice or procedure” must impose a discriminatory burden on members of a protected class, meaning that members of the protected class “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” Second, the burden must in part be caused by or linked to social or historical conditions that have or currently produce discrimination against members of the protected class.

Competitors will have to argue which test applies, as well as whether they win under each test.