

Court held that the high filing fees were not rationally related to the state's interest in allowing only serious candidates on the ballot because some serious candidates could not pay the fees whereas some frivolous candidates could and that the state could not finance the costs of holding the elections from the fees when the voters were thereby deprived of their opportunity to vote for candidates of their preferences.

Extending *Bullock*, the Court held it impermissible for a state to deny indigents, and presumably other persons unable to pay filing fees, a place on the ballot for failure to pay filing fees, however reasonable in the abstract the fees may be. A state must provide such persons a reasonable alternative for getting on the ballot.²⁰⁴⁸ Similarly, a sentencing court in revoking probation must consider alternatives to incarceration if the reason for revocation is the inability of the indigent to pay a fine or restitution.²⁰⁴⁹

In *Crawford v. Marion County Election Board*,²⁰⁵⁰ however, a Court plurality held that a state may require citizens to present a government-issued photo identification in order to vote. Although Justice Stevens' plurality opinion acknowledged "the burden imposed on voters who cannot afford . . . a birth certificate" (but added that it was "not possible to quantify . . . the magnitude of the burden on this narrow class of voters"), it noted that the state had not "required voters to pay a tax or a fee to obtain a new photo identification," and that "the photo-identification cards issued by Indiana's BMV are also free."²⁰⁵¹ Justice Stevens also noted that a burden on voting rights, "[h]owever slight . . . must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation,'" ²⁰⁵² and he found three state interests that were sufficiently weighty: election modernization (*i.e.*, complying with federal statutes that require or permit the use of state motor vehicle driver's license applications to serve various purposes connected with voter registration), deterring and detecting voter fraud, and safeguarding voter confidence. Justice Stevens' opinion, therefore, rejected a facial challenge to the statute,²⁰⁵³ finding that, even though it was "fair to infer that partisan considerations may have played

²⁰⁴⁸ *Lubin v. Panish*, 415 U.S. 709 (1974). Note that the Court indicated that *Bullock* was decided on the basis of restrained review. *Id.* at 715.

²⁰⁴⁹ *Bearden v. Georgia*, 461 U.S. 660 (1983).

²⁰⁵⁰ 128 S. Ct. 1610 (2008). Justice Stevens' plurality opinion was joined by Chief Justice Roberts and Justice Kennedy. Justice Scalia wrote a concurring opinion that was joined by Justices Thomas and Alito, and Justices Souter, Ginsberg, and Breyer dissented.

²⁰⁵¹ 128 S. Ct. at 1622, 1621.

²⁰⁵² 128 S. Ct. at 1616.

²⁰⁵³ "A facial challenge must fail where the statute has a plainly legitimate sweep." 128 S. Ct. at 1623 (internal quotation marks omitted).