

a significant role in the decision to enact” the statute, the statute was “supported by valid neutral justifications.”²⁰⁵⁴ Justice Scalia, in his concurring opinion, would not only have upheld the statute on its face, but would have ruled out as-applied challenges as well, on the ground that “[t]he Indiana photo-identification law is a generally applicable, nondiscriminatory voting regulation,” and, “without proof of discriminatory intent, a generally applicable law with disparate impact is not unconstitutional.”²⁰⁵⁵ Justice Souter, in his dissenting opinion, found the statute unconstitutional because “a State may not burden the right to vote merely by invoking abstract interests, be they legitimate or even compelling, but must make a particular, factual showing that threats to its interests outweigh the particular impediments it has imposed. . . . The Indiana Voter ID Law is thus unconstitutional: the state interests fail to justify the practical limitations placed on the right to vote, and the law imposes an unreasonable and irrelevant burden on voters who are poor and old.”²⁰⁵⁶

Access to Courts.—In *Boddie v. Connecticut*,²⁰⁵⁷ Justice Harlan carried a majority of the Court with him in using a due process analysis to evaluate the constitutionality of a state’s filing fees in divorce actions that a group of welfare assistance recipients attacked as preventing them from obtaining divorces. The Court found that, when the state monopolized the avenues to a pacific settlement of a dispute over a fundamental matter such as marriage—only the state could terminate the marital status—then it denied due process by inflexibly imposing fees that kept some persons from using that avenue. Justice Harlan’s opinion averred that a facially neutral law or policy that did in fact deprive an individual of a protected right would be held invalid even though as a general proposition its enforcement served a legitimate governmental interest. The opinion concluded with a cautioning observation that the case was not to be taken as establishing a general right to access to the courts.

The *Boddie* opinion left unsettled whether a litigant’s interest in judicial access to effect a pacific settlement of some dispute was an interest entitled to some measure of constitutional protection as a value of independent worth or whether a litigant must be seeking to resolve a matter involving a fundamental interest in the only forum in which any resolution was possible. Subsequent decisions established that the latter answer was the choice of the Court. In

²⁰⁵⁴ 128 S. Ct. at 1624. “[A]ll of the Republicans in the [Indiana] General Assembly voted in favor of [the statute] and the Democrats were unanimous in opposing it.” *Id.* at 1623.

²⁰⁵⁵ 128 S. Ct. at 1625, 1626.

²⁰⁵⁶ 128 S. Ct. 1627, 1643 (citations omitted).

²⁰⁵⁷ 401 U.S. 371 (1971).