ELECTION LAW — VOTER IDS — EIGHTH CIRCUIT DENIES FACIAL CHALLENGE UNDER SUPREME COURT PRECEDENT. — *Brakebill v. Jaeger*, 932 F.3d 671 (8th Cir. 2019).

In recent years, a number of states have enacted statutes requiring potential voters to show IDs in order to cast ballots.[1] Supporters of such laws generally argue that they prevent fraud, while opponents suggest that fraud is rare and that ID requirements — usually enacted by Republican-controlled state governments — disproportionately burden Democratic-leaning minority groups and the poor, who are less likely to have IDs.[2] The battle has frequently entered the courts.[3] In 2008, the Supreme Court rejected a facial constitutional challenge[4] to Indiana's voter ID statute in *Crawford v. Marion County Election Board*,[5] holding that "the evidence in the record [was] not sufficient" to invalidate "the entire statute."[6] *Crawford* emphasized that "a court evaluating a constitutional challenge to an election regulation [must] weigh the asserted injury to the right to vote against" the state's interests in regulation.[7] Recently, in *Brakebill v. Jaeger*,[8] the Eighth Circuit relied on *Crawford* in rejecting a facial challenge to North Dakota's voter ID statute, concluding that even an "unjustified burden" on a minority of voters — here, Native Americans without residential addresses — would not merit facial relief.[9] However, *Crawford* did not require such a severe limitation on facial challenges, and examination of the potential remedies for the *Brakebill* plaintiffs under as-applied and facial challenges suggests that summary rejection of the latter was inappropriate in this case.

North Dakota in 2013 enacted and in 2015 amended a voter ID law requiring that residents present an ID showing a residential address when voting.[10] Seven Native American plaintiffs without qualifying IDs sued the North Dakota Secretary of State, alleging that the restrictions burdened their right to vote in violation of Section 2 of the

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[1] *See* Michael D. Gilbert, *The Problem of Voter Fraud*, 115 COLUM. L. REV. 739, 744 (2015).

[2] *See id.* at 745–50.

[3] *See* Erin A. Penrod, *Disenfranchisement 2.0: Recent Voter ID Laws and the Implications Thereof*, 14 U. ST. THOMAS L.J. 207, 222–23 (2018).

[4] Roughly speaking, a facial challenge is one that seeks to invalidate a statutory provision "in one fell swoop," preventing its application under any circumstances. Joshua A. Douglas, *The Significance of the Shift Toward As-Applied Challenges in Election Law*, 37 HOFSTRA L. REV. 635, 640 (2009). This approach is generally contrasted with as-applied challenges, which seek to have a law declared invalid "when applied to [a] particular plaintiff." *Id.* at 641.

[5] 553 U.S. 181 (2008). The *Crawford* Court was "fractured," with Justice Stevens authoring the controlling lead opinion. Brakebill v. Jaeger, 932 F.3d 671, 687 n.2 (8th Cir. 2019) (Kelly, J., dissenting).

[6] *Crawford*, 553 U.S. at 189 (opinion of Stevens, J.).

[7] *Id.* at 190.

[8] 932 F.3d 671.

[9] *Id.* at 678 (quoting *Crawford*, 553 U.S. at 203 (opinion of Stevens, J.)); *see id.* at 677–81.

[10] N.D. CENT. CODE § 16.1-05-07 (2015) (amended 2017); *see Brakebill*, 932 F.3d at 674.

Voting Rights Act and the state and federal constitutions.[11] Concluding that the plaintiffs would likely succeed on their equal protection claim, the district court issued a preliminary injunction requiring a "fail-safe" measure giving voters an alternative to presenting an ID.[12] The Secretary did not appeal, and the legislature instead enacted a new statute requiring voters to present either a driver's license or tribal government ID bearing the voter's name, "[c]urrent residential street address," and birth date.[13] Otherwise-qualifying IDs that lack required information can be supplemented with select documents.[14] An individual without ID can cast a ballot that is set aside and not counted unless the voter supplies the necessary ID within six days.[15] Six of the plaintiffs filed an amended complaint and moved for a new preliminary injunction.[16]

The trial court partially granted the motion.[17] The court observed that the statute retained the ID requirements "previously found to impose a discriminatory and burdensome impact on Native Americans."[18] It analyzed the statute under *Crawford*, weighing the burden on the plaintiffs' right to vote against the state's interest in enforcement.[19] It identified a number of issues, including that many Native American voters lack a qualifying ID and residential address and that the residential address provision would disenfranchise the homeless.[20] The court concluded that these problems outweighed the state's interest in safeguarding the integrity of its elections, justifying "a very limited preliminary injunction."[21] The court enjoined the Secretary from enforcing the current residential address requirement and restricting the set of acceptable IDs and supplemental documents.[22] The Secretary appealed.[23]

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[11] Brakebill v. Jaeger, No. 16-cv-008, 2016 WL 7118548, at *2–3 (D.N.D. Aug. 1, 2016).

[12] *Id.* at *10, *13. The court cited voter affidavits as a possible fail-safe mechanism. *Id.* at *1, *12.

[13] N.D. CENT. CODE § 16.1-01-04.1 (2019); *see Brakebill*, 932 F.3d at 674. The ability of homeless people to satisfy the address requirement is unclear. *Compare Brakebill*, 932 F.3d at 677 (homeless people can use shelter address), *with id.* at 682 (Kelly, J., dissenting) (requirement is "insurmountable").

[14] N.D. CENT. CODE. § 16.1-01-04.1.

[15] *Id.*

[16] *Brakebill*, 932 F.3d at 675.

[17] Brakebill v. Jaeger, No. 16-cv-008, 2018 WL 1612190, at *7 (D.N.D. Apr. 3, 2018). The court also vacated the previous injunction as moot. *Id.* at *8.

[18] *Id.* at *2.

[19] *See id.* at *3–6.

[20] *Id.* at *4–6. The burden on Native Americans stems in part from the lack of residential addresses on reservations. *See Brakebill*, 932 F.3d at 682 (Kelly, J., dissenting). The court also noted that the set-aside ballot provision would likely confuse voters, that IDs cost money, and that there was no evidence of voter fraud. *Brakebill*, 2018 WL 1612190, at *4–6.

[21] *Brakebill*, 2018 WL 1612190, at *7. The court applied the preliminary injunction standard from *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109 (8th Cir. 1981). *Brakebill*, 2018 WL 1612190, at *3–4.

[22] *Brakebill*, 2018 WL 1612190, at *7. Citing possible voter confusion, *id.* at *4–5, the court also ordered a public clarification of the set-aside provision's requirements, *id.* at *7.

[23] *Brakebill*, 932 F.3d at 674. The Secretary also filed a motion to stay the portion of the injunction addressing the current residential address requirement pending appeal, which the district court

The Eighth Circuit vacated the preliminary injunction.[24] Writing for the panel, Judge Colloton[25] concluded that "the alleged burdens [did] not justify" granting a preliminary injunction because the plaintiffs were unlikely to succeed on the merits.[26] The court first held that the "facial challenge to the residential street address requirement" was unlikely to succeed.[27] Judge Colloton, relying in part on the Supreme Court's refusal to entertain a facial challenge in *Crawford*, emphasized that such challenges are "disfavored."[28] Determining that individuals could obtain residential IDs without owning property, the court first rejected the argument that the statute unconstitutionally burdened voting by requiring property ownership, instead concluding that it served the state's "legitimate interest in preventing voter fraud."[29] Thus it was not "invidiously 'unrelated to voter qualifications.'"[30] Next, addressing the burden the statute placed on Native Americans without street addresses, Judge Colloton held that, "'even assuming an unjustified burden on some voters,' the 'proper remedy' would not be 'to invalidate the entire statute.'"[31] The fact that most voters could comply with the requirements rendered facial relief overbroad.[32]

The majority next considered the provision listing acceptable forms of ID, similarly concluding that any resulting burden did not justify the district court's injunction.[33] Judge Colloton acknowledged that over 69,000 otherwise eligible voters lacked a qualifying ID but emphasized that this still left eighty-eight percent of eligible voters unburdened.[34] Furthermore, the record did not indicate the number of residents who did not possess either an ID or the documentation necessary to acquire

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denied. *See* Brakebill v. Jaeger, No. 16-cv-008, 2018 WL 4714914, at *1, *3 (D.N.D. Apr. 30, 2018). On September 24, 2018, the Eighth Circuit granted the stay, Brakebill v. Jaeger, 905 F.3d 553, 561 (8th Cir. 2018), which the Supreme Court, over a two-Justice dissent, subsequently declined to vacate, Brakebill v. Jaeger, 139 S. Ct. 10, 10 (2018) (mem.).

[24] *Brakebill*, 932 F.3d at 681.

[25] Judge Colloton was joined by Judge Benton.

[26] *Brakebill*, 932 F.3d at 674; *see id.* at 676–77. Before addressing the merits, the majority first rejected the argument that the plaintiffs lacked standing. *Id.* At least one plaintiff held an outdated ID, such that he would need either to obtain a new ID or new documentation or else to vote in the district in which he previously resided. *See id.* at 677. Thus there was sufficient injury to establish standing. *Id.* The Secretary's argument that the burden was slight was unavailing: "[T]he severity of the burden is a question relating to the merits." *Id.*

[27] *Id.* at 677.

[28] *Id.* (citing Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 449–51 (2008)).

[29] *Id.* at 677; *see id.* at 677–78.

[30] *Id.* at 678 (quoting Crawford v. Marion Cty. Election Bd., 553 U.S. 181, 189 (2008) (opinion of Stevens, J.)).

[31] *Id.* (quoting *Crawford*, 553 U.S. at 203 (opinion of Stevens, J.)). The court suggested that facial invalidation would require showing that the statute "impose[d] a substantial burden on most . . . voters." *Id.*

[32] *See id.*

[33] *Id.*

[34] *Id.* at 678–79.

one and who had been unable, with "reasonable effort," to obtain either, which was "the relevant question."[35] Judge Colloton also rebuffed the plaintiffs' argument that this element of the injunction must be sustained because, per the district court's findings, the state charged a fee for IDs.[36] Citing a state statute and the state Department of Transportation's website, he rejected the district court's finding and concluded that nondriver IDs could be obtained without charge.[37] The provision thus passed constitutional muster.[38]

The court further held that the record did not support enjoining the supplemental documents provision.[39] Although the district court concluded that many voters who lacked a qualifying ID also lacked such documents, rendering "2,305 Native Americans [unable] to vote in 2018,"[40] Judge Colloton emphasized that there was no record of those individuals' attempts to acquire documentation and that they "represent[ed] less than 0.5% of all eligible voters in the State."[41] A statewide injunction was therefore overbroad.[42]

In closing,[43] the court observed that *Crawford* potentially left room for narrower, as-applied challenges.[44] The majority invited such challenges and did not address the plaintiffs' other claims.[45]

Judge Kelly dissented, emphasizing the undisputed evidence of the statute's disparate impact on Native Americans and the deferential abuse of discretion standard of review.[46] While the statute in *Crawford* survived the Court's balancing test, Judge Kelly concluded that factual differences between the two statutes — in particular, the IDs' cost and evidence that acquiring an ID effectively required property ownership — justified a different outcome here.[47] Unlike in *Crawford*, the undisputed facts in this case established "ample concrete evidence" of a burden on

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[35] *Id.* at 679 (citing *Crawford*, 553 U.S. at 198–99 (opinion of Stevens, J.)).

[36] *Id.*

[37] *Id.* (first citing N.D. CENT. CODE § 39-06-03.1(4) (2019); and then citing *ID Card Requirements*, N.D. DEP'T TRANSP., https://www.dot.nd.gov/divisions/driverslicense/idrequirements.htm [https://perma.cc/9SEY-NQQF]).

[38] *See id.*

[39] *Id.*

[40] *Id.*

[41] *Id.* at 680; *see id.* at 679–80.

[42] *Id.* at 680 ("The findings thus [did] not establish that the statute place[d] a substantial burden on most North Dakota voters, and a statewide injunction . . . [was] unwarranted.").

[43] The court also addressed the portion of the injunction requiring clarification of the set-aside provision, noting that "[t]he plaintiffs did not seek this relief, and they [did] not defend [it] on appeal." *Id.* With "no evidence" of confusion, the majority vacated this element as well. *Id.*

[44] *See id.*

[45] *See id.* at 681.

[46] *See id.* (Kelly, J., dissenting).

[47] *See id.* at 688–89.

voters.[48] Judge Kelly concluded that the district court did not abuse its discretion,[49] and termed its remedy "limited," rather than overbroad.[50]

The majority's reversal of the district court's injunction with respect to the current residential address requirement rested on the idea that Supreme Court precedent, including *Crawford*, disfavors facial challenges.[51] The *Brakebill* court held that even an "unjustified burden" on a minority of voters did not justify facial relief.[52] However, *Crawford* does not require such a uniformly high hurdle for facial challenges, instead calling for a fact-intensive balancing test.[53] The facts of *Brakebill* — and a comparison of potential remedies under as-applied and facial challenges — demonstrate that the court erred in too quickly rejecting the possibility of a facial challenge. Critically, the distinction between facial and as-applied relief in voter ID cases is not as clear as the majority suggests. This is true both in general and in the specific case of *Brakebill*. This similarity between the available relief under both types of challenges weakens both the practical and normative reasons for disfavoring the facial approach. The *Brakebill* court's summary rejection of facial relief was therefore inappropriate and will unnecessarily narrow the availability of such relief in future cases.

In general, the difference between effective remedies for as-applied and facial challenges in voter ID cases is limited. In order to be meaningful, relief in an as-applied challenge would need to be available to burdened voters as a class and prior to an election.[54] It would need to be available on a class-action basis because of the difficulty individuals would face in pursuing individual suits: if the ID requirement itself poses an unconstitutional burden, then individual litigation is unlikely to provide an effective remedy.[55] As-applied relief via a class action (or some equivalently broad form), on the other hand, would allow for more

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[48] *Id.* at 689; *see id.* at 689–91.

[49] *Id.* at 690–91. Judge Kelly also found that the other *Dataphase* factors weighed in favor of a preliminary injunction. *Id.* at 691.

[50] *Id.* at 692.

[51] *See id.* at 677 (majority opinion).

[52] *Id.* at 678 (quoting Crawford v. Marion Cty. Election Bd., 553 U.S. 181, 203 (2008) (opinion of Stevens, J.)).

[53] *See Crawford*, 553 U.S. at 190–91 (opinion of Stevens, J.) (requiring balancing); *id.* at 191 (holding that there is no "litmus test" for evaluating alleged burdens on a "discrete class of voters"); *Brakebill*, 932 F.3d at 687–88 (Kelly, J., dissenting). In particular, the *Crawford* Court's emphasis on the factual inadequacy of the record in that case, *see* 553 U.S. at 189, 200–02 (opinion of Stevens, J.), makes it illogical to think that the Court intended for the results of this particular balancing test to govern all future voter ID cases.

[54] *See* Joseph Fishkin, *Equal Citizenship and the Individual Right to Vote*, 86 IND. L.J. 1289, 1331 (2011).

[55] *See* Richard L. Hasen, *Softening Voter ID Laws Through Litigation: Is It Enough?*, 2016 WIS. L. REV. FORWARD 100, 111–13. Of course, as-applied suits may be unable to provide a remedy. However, this would cut strongly against insistence on as-applied challenges, as in general the legal system aims to provide remedies. *See* Marbury v. Madison, 5 U.S. (1 Cranch) 137, 147 (1803).

efficient litigation, require the identification of only a single class representative, and be more likely to attract pro bono attorneys seeking cases with broad impact.[56] In addition, relief provided after an election has already taken place would be effectively "meaningless," such that any meaningful relief would need to be available in advance.[57] Thus, effective as-applied relief in the voter ID context must be both broad and anticipatory — rendering it similar to facial relief.

In *Brakebill* in particular, an effective remedy under an as-applied challenge would likely have closely resembled the existing injunction. The district court's injunction required state officials to accept IDs showing a "current mailing address" in addition to those indicating a current residential address.[58] A class action as-applied remedy would presumably be very similar — perhaps enjoining enforcement of the statute or providing some sort of "fail-safe" option, such as an affidavit[59] — but only for class members.[60] This raises the question of how class members would identify themselves in order to access the remedy. The district court established that affected voters would find it burdensome to access documentation or IDs,[61] suggesting that finding a workable standard by which class members can demonstrate their eligibility to vote via any judicial remedy would be difficult.[62] Crafting a system for identifying class members would thus require judicial creativity that arguably borders on legislative activity, which the Supreme Court has discouraged.[63] Moreover, any as-applied remedy allowing voters either to show a qualifying ID or to establish themselves as class members and follow some alternative practice could be reframed as a facial remedy: everyone can either follow the statute or attempt to follow the court's

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[56] *See* Julien Kern, *As-Applied Constitutional Challenges, Class Actions, and Other Strategies: Potential Solutions to Challenging Voter Identification Laws After* Crawford v. Marion County Election Board, 42 LOY. L.A. L. REV. 629, 651–54 (2009); *see also, e.g.*, United States v. Nat'l Treasury Emps. Union, 513 U.S. 454, 477–78 (1995) (upholding a statute providing as-applied relief in class action).

[57] *See* Fishkin, *supra* note 54, at 1331. The *Brakebill* majority acknowledged the possibility of such advance relief. *Brakebill*, 932 F.3d at 680–81.

[58] Brakebill v. Jaeger, No. 16-cv-008, 2018 WL 1612190, at *7 (D.N.D. Apr. 3, 2018).

[59] *See* Brakebill v. Jaeger, No. 16-cv-008, 2016 WL 7118548, at *1, *13 (D.N.D. Aug. 1, 2016).

[60] *See* Fishkin, *supra* note 54, at 1327–28 (discussing model of as-applied challenges where remedy would apply to plaintiffs as well as "some as-yet-undetermined set of others similarly situated," *id.* at 1327); *cf. Brakebill*, 2016 WL 7118548, at *1, *13 (suggesting affidavits as fail-safe measure).

[61] *See Brakebill*, 2018 WL 1612190, at *4.

[62] *See* Appellant's Brief at 6, *Brakebill*, 932 F.3d 671 (8th Cir. 2019) (No. 18-1725) (expressing concern that affidavit option was too difficult to verify). North Dakota's lack of a voter registration system would worsen the issue. *See Brakebill*, 2018 WL 1612190, at *6. The state does "maintain[] a Central Voter File." *Id.*

[63] *See* Richard H. Fallon, Jr., *Fact and Fiction About Facial Challenges*, 99 CALIF. L. REV. 915, 958–59 (2011).

procedure for class members.[64] Viewed from this perspective, the distinction between as-applied and facial challenges in *Brakebill* strains to hold the weight the majority assigns it.[65]

In light of this similarity, the normative reasons for disfavoring facial challenges apply less strongly in *Brakebill* than in *Crawford*, and may suggest more generally that the latter does not require a sweeping reduction in the availability of facial challenges. In *Washington State Grange v. Washington State Republican Party*,[66] cited in *Crawford*, the Court laid out three reasons to prefer as-applied challenges: (1) facial challenges' tendency to rely on "speculation" about facts, (2) a desire to avoid addressing constitutional questions not before a court, and (3) the risk of frustrating elected representatives' will.[67] These considerations do not require the decision reached in *Brakebill*. First, unlike *Crawford*, *Brakebill* did not require significant factual speculation: In *Crawford*, the factual record did not allow the Court to determine the law's burdensomeness.[68] By contrast, the key facts of *Brakebill* were well developed and, in some cases, undisputed.[69] The court even assumed that the residential address requirement was "excessively burdensome" on some voters — but still held that burden insufficient to justify a facial challenge.[70] Furthermore, facial and classwide as-applied challenges would involve similar evidence.[71] Second, a facial challenge involves no more unnecessary anticipation of a constitutional issue than an as-applied challenge made prior to implementation: each would concern a constitutional claim brought in advance of enforcement, presenting the same degree of anticipation.[72] In addition, either type of challenge

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[64] *Cf. Brakebill*, 932 F.3d at 678 (refusing a remedy that applies to "*all* voters"). Of course, whatever remedy a court might grant a class would *legally* be available only to those class members. However, the statute is based largely on a fear of *illegal* voting, including a concern that fraudulent voters might abuse an affidavit option, *see* Appellant's Brief, *supra* note 62, at 5–7, suggesting that, from the state's perspective, an alternative voting method specifically for class members might simply constitute another avenue by which fraudulent voters could attempt to cast ballots.

[65] *See* Nathaniel Persily & Jennifer S. Rosenberg, *Defacing Democracy?: The Changing Nature and Rising Importance of As-Applied Challenges in the Supreme Court's Recent Election Law Decisions*, 93 MINN. L. REV. 1644, 1673 (2009).

[66] 552 U.S. 442 (2008).

[67] *Id.* at 450–51; *see also* Crawford v. Marion Cty. Election Bd., 553 U.S. 181, 200, 202–03 (2008) (opinion of Stevens, J.) (relying on reasoning from *Washington State Grange* in rejecting facial challenge).

[68] *See Crawford*, 553 U.S. at 200 (opinion of Stevens, J.).

[69] *See Brakebill*, 932 F.3d at 682, 688–90 (Kelly, J., dissenting); Brakebill v. Jaeger, No. 16-cv-008, 2018 WL 1612190, at *2–6 (D.N.D. Apr. 3, 2018).

[70] *Brakebill*, 932 F.3d at 678 (quoting *Crawford*, 553 U.S. at 202 (opinion of Stevens, J.)); *cf. id.* at 679 (citing factual uncertainty as reason to vacate preliminary injunction regarding supplemental documents).

[71] *Cf.* Jackson v. City & County of San Francisco, 746 F.3d 953, 962 (9th Cir. 2014) (allowing facial challenge where statute could be enforced only in single, uniform manner).

[72] *Cf.* Citizens United v. FEC, 558 U.S. 310, 376 (2010) (Roberts, C.J., concurring) (noting that "it makes no difference" whether challenge is facial or as-applied where same rule would govern all claims).

would involve application of the same Supreme Court precedent,[73] limiting the risk of a new, overbroad rule.[74] Third, the risk of frustrating legislative will is present, but that is the case in any judicial review of legislative action and has not prevented the Court from striking down significant election law statutes in recent years.[75] While *Brakebill* is not clearly distinguishable from *Crawford* with respect to this risk, the *Crawford* Court did not cast concern about legislative frustration as an insurmountable hurdle, observing only that the *Crawford* plaintiffs "ha[d] not demonstrated" facial invalidation to be "proper."[76] The Court's three normative concerns regarding facial challenges do not clearly require the rejection of the facial challenge in *Brakebill*. The *Brakebill* court should therefore not have been so quick to hold the line against facial challenges.

Thus, in insisting on an as-applied challenge to North Dakota's voter ID statute, the Eighth Circuit failed to recognize that *Brakebill* presented the sort of case in which, under *Crawford*, a facial challenge could still be appropriate. Its summary rejection of such challenges promises both short- and long-term effects: Most concretely, the *Brakebill* litigation left a substantial number of North Dakota residents realistically unable to access the ballot in 2018 and perhaps beyond.[77] More broadly, the court's reasoning will channel future plaintiffs toward as-applied challenges. While these challenges may provide a viable path to relief and symbolically affirm the importance of each individual's right to vote,[78] their practical effectiveness is still debated, and plaintiffs might well prefer the symbolic force of a full-scale invalidation of a statute that burdens their voting rights.[79] Whether the value of avoiding facial challenges outweighs the drawbacks of as-applied challenges is an open question and will remain so until a court squarely considers the issue. The *Brakebill* court missed its opportunity to do so.

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[73] *See Crawford*, 553 U.S. at 189–90 (opinion of Stevens, J.).

[74] Indeed, the *Crawford* Court did not mention this concern. *See id.* at 200–03.

[75] *See, e.g.*, *Citizens United*, 558 U.S. at 365; *see also* North Carolina v. Covington, 138 S. Ct. 2548, 2554 (2018) (per curiam). Scholars have observed that the Court's practice does not accord with its oft-pronounced disfavor for facial challenges. *See, e.g.*, Fallon, *supra* note 63, at 917–18.

[76] *Crawford*, 553 U.S. at 203 (opinion of Stevens, J.).

[77] *See Brakebill*, 932 F.3d at 678–80; *id.* at 681 (Kelly, J., dissenting); Brakebill v. Jaeger, 905 F.3d 553, 561 (8th Cir. 2018) (staying the district court's injunction pending appeal).

[78] *See* Veasey v. Abbott, 830 F.3d 216, 271–72 (5th Cir. 2016); Fishkin, *supra* note 54, at 1326.

[79] *See* Douglas, *supra* note 4, at 638 (questioning practical effectiveness of as-applied challenges); Hasen, *supra* note 55, at 111–17 (same); *cf.* Emily Bazelon & Adam Liptak, *What's at Stake in the Supreme Court's Gay-Marriage Case*, N.Y. TIMES MAG. (Apr. 28, 2015), https://nyti.ms/1Dwh4xt [https://perma.cc/8CYD-QPY2] (noting the "symbolic value" of a broad ruling recognizing the equality of gay couples).