

US Supreme Court reviews Indiana voter ID law

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The US Supreme Court on Wednesday began hearing arguments on the constitutionality of a 2005 Indiana law that requires voters to show government-issued photo identification, such as a driver's license or passport, before voting.

With 20 states having already passed restrictive voter ID laws and several others considering similar legislation, a ruling by the high court, which is expected by late June, could substantially affect voter turnout in this year's presidential election and possibly alter its outcome.

The Brennan Center for Justice at New York University's School of Law estimates that up to 20 million citizens could be prevented from voting in the November election if the Supreme Court rules in favor of Indiana and other states adopt strict ID requirements.

The court's last intervention in a major voting rights case was the 5-4 decision that sanctioned the suppression of votes in Florida and handed the White House to Bush in 2000. Noting this record Richard Hasen, an election law expert at Loyola Law School in Los Angeles, told *USA Today*, "There's more than a little bit of irony in going to the Supreme Court and asking them to rise above partisan politics in election cases."

Indiana's voter ID law is considered the most restrictive in the nation. Passed by the state legislature shortly after the Republicans took over the majority in 2004, the measure requires voters to present a government-issued ID with an expiration date to vote in federal, state and local elections.

Voters who cannot produce a photo ID can cast a provisional ballot that will count only if the voter travels to a circuit court or county election board—during working hours—to prove his or her identity within 10 days of the election.

The law has the support of the Bush administration, which submitted a brief in support of the state of Indiana.

In the oral arguments on Wednesday, Paul Smith, the

attorney arguing against the voter ID laws, noted, "This case involves a law that directly burdens our most fundamental right, the right to vote. Those Indiana voters who lack the identification now required by the new photo ID law must overcome substantial practical and financial burdens before they can continue to exercise their constitutional right."

Smith was immediately subjected to criticism from the court, and the majority of Supreme Court Justices indicated that they were prepared to uphold the law. The court that ruled in *Bush v. Gore* has since seen the addition of two right-wing Bush appointees, Justice Samuel Alito and Chief Justice John Roberts. Alito, Roberts and Justice Antonin Scalia clearly indicated their support for the law during the arguments, and they will likely be joined by Justice Clarence Thomas.

Justice Anthony Kennedy, considered the "swing" vote in the case, indicated his skepticism to the challenges to the law. "You want us to invalidate a statute on the ground that it's a minor inconvenience to a small percentage of voters?" he asked Smith. Here Kennedy was accepting the contention of Indiana that the law will not affect many voters.

Republican legislators also claim the law will eliminate voter fraud, although Indiana has never prosecuted anyone for violations that the law allegedly seeks to stop. Opponents of the Indiana statute note that voter ID and other obstructions impose unreasonable obstacles, similar to the poll taxes used in the South during the Jim Crow period to exclude blacks and poor whites from voting.

"Onerous voter ID laws like Indiana's do not prevent fraud—they create excessive burdens on voting rights without any justification whatsoever," said Ken Falk, Legal Director of the American Civil Liberties Union of Indiana and lead counsel on the case.

In fact, the entire discussion on "vote fraud" is itself a fraud. It has been used to justify not only voter-ID laws,

but other campaigns designed to suppress turnout, especially among working class and minority voters. This was a central question in the US attorney firing scandal that led to the resignation of former Attorney General Alberto Gonzales last year. The Bush administration had forced out attorneys who had been unwilling to pursue vote fraud campaigns that were designed to manipulate elections in favor of Republican candidates.

The Supreme Court is reviewing an appeal of two previous cases—*Crawford v. Marion County Election Board* and *Indiana Democratic Party v. Rokita*—that failed to overturn the law in lower courts. A federal trial judge and the 7th US Circuit Court of Appeals in Chicago have also upheld the law.

The 7th Circuit is the home court of the Federal Appeals Judge Richard Posner. A reactionary defender of the Bush administration's torture policy, who once referred to the US Constitution as an "old piece of parchment," Posner also expressed his hostility to voting rights by barring independent presidential candidate Ralph Nader from the Illinois ballot in 2004.

The circuit court's January 2007 ruling in the favor of the law, the ACLU said, "upheld Indiana's voter ID law by minimizing the right of every individual to vote without being subjected to undue burdens imposed by the state. There is no evidence that Indiana's voter ID law is justified by any actual problem of voting fraud, which is already prohibited by various criminal statutes in the state. No cases of in-person voting fraud have ever been prosecuted in the state in recent history."

Opponents of the law argue the real potential for voter fraud lies in the filing of absentee ballots and that Indiana has made it easier to vote absentee in recent years. "Indiana's law serves no legitimate state purposes," said ACLU Legal Director Steven Shapiro, who argued the *Crawford v. Marion Election Board* case. "It does, however, disproportionately deny otherwise eligible voters who are poor, minority, elderly or disabled the right to vote. As we begin a tightly fought presidential campaign, it is essential that our electoral rules be fair and impartial."

In addition to the ACLU, plaintiffs in the case include the Indianapolis branch of the National Association for the Advancement of Colored People (NAACP), organizations representing seniors, the homeless and disabled, as well as two elected Democratic officials.

While Democratic Party officials are opposing the law for their own partisan reasons, the party has no more interest in upholding the fundamental right to vote than

the Republicans. Democratic officials have engaged in furious attempts to keep third party candidates off local and national ballots and have been complicit in all aspects of the Bush administration's attack on democratic rights, beginning with the capitulation of Gore in the 2000 elections.

Opponents of the law note that people who don't drive can get a free state-issued ID card, but they still must pay to get their birth certificates and other underlying documents needed to apply for the ID. It can cost \$60 to \$70 to get a birth certificate from other states, for example.

Carter Phillips, a Supreme Court lawyer, noted in a supporting brief, "Obtaining a photo identification card under Indiana law requires documentation that is difficult, if not impossible, for many homeless individuals to provide."

Although people without photo IDs can cast provisional ballots under the existing law, the Marion County Election Board said that just two of 34 voters who cast provisional ballots because they lacked voter ID showed up at county offices to validate their vote in the 2007 municipal election. Their signatures all matched those on file, but were not counted because of the photo ID requirement.

In court documents prepared for *Crawford v. Marion County Election Board* attorneys noted that a person born in Marion County—which includes Indianapolis—who needs to obtain a birth certificate may not be able to obtain the document from the Marion County Health Department without producing a license or state identification that he or she is attempting to procure by obtaining the birth certificate. "While this may not fit the textbook definition of 'Hobson's choice,'" they wrote, "it is obviously a Catch-22 of class proportions and 'imposes a substantial burden on voter choice.'"



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