

# US Supreme Court upholds anti-democratic voter ID law

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The US Supreme Court on Monday upheld an Indiana law requiring voters to produce government-issued photo identification, such as a driver's license or a passport, at the polls. The court, by a 6-3 majority, asserted that the law does not impinge on the constitutional right to vote.

The decision is deeply anti-democratic. It ignores the fact that the effect of the law will be to prevent tens of thousands of registered Indiana voters, overwhelmingly poor, minority and elderly, to cast ballots because they either do not drive or do not otherwise possess such forms of ID.

That this was the purpose of the Indiana law is clear. It was promoted by the Republican Party, passed by a Republican-dominated legislature and signed by a Republican governor in order to bar from the polls voters who normally vote Democratic. The state was neither able, nor was it required by the court, to demonstrate that the purported purpose of the law—to prevent voter fraud—was necessitated by any significant number of voters attempting to cast ballots under false pretences.

The decision sets a precedent for the sanctioning of similar laws already passed in at least twenty other states and the encouragement of states that do not have such laws to enact them in the future. It could have an impact on the November elections in Indiana and other states.

The ruling upholds an Indiana law passed in 2005, according to which a voter who does not produce a state or federal photo ID may cast only a provisional ballot and must sign an affidavit to provide documents to the county seat proving identity within ten days of an election.

There is no factual basis to the claim of the law's backers that individual voter fraud is a menace to the electoral process. Rather, the specter of such "voter fraud" is a concoction of right-wing forces intent on suppressing votes and disenfranchising working class voters.

The challengers of the Indiana law, including the Indiana Democratic Party, the American Civil Liberties Union and civil rights groups, pointed out that the state—like most others in the country—has not had a single documented case of ballot fraud in the form of in-person voter impersonation in its electoral history.

The controlling decision in the case, *Crawford v. Marion County Election Board*, was written by Associate Justice John Paul Stevens. He was joined in his opinion by Chief Justice John Roberts and Associate Justice Anthony Kennedy.

Associate justices Samuel Alito, Clarence Thomas, and Antonin

Scalia joined in upholding the Indiana law, but signed a separate and even more right-wing opinion, written by Scalia.

Dissenting was Associate Justice David Souter, who issued an opinion joined by Associate Justice Ruth Bader Ginsburg, and Associate Justice Stephen Breyer, who issued a separate dissenting opinion.

Reaffirming the 2005 decision of the Southern Indiana district court that upheld the law, Stevens wrote that the law "is amply justified by the valid interest in protecting 'the integrity and reliability of the electoral process.'"

The majority rejected the Democratic Party's charge that the law was crafted for the benefit of Republicans because the poor and minority voters who are more likely to be disenfranchised by the ID requirement overwhelmingly vote Democratic. Stevens wrote that the statute "should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators."

Stevens also reiterated the lower court's rejection as "utterly incredible and unreliable" statistical reports estimating that as many 989,000 registered voters in Indiana were without the required forms of photo ID.

The Indiana district court offered a counter-estimate of 43,000 voters without required IDs, which Stevens reaffirmed as not excessive. This figure amounts to 1 percent of the state's voting-age population; in contrast, a number of national surveys have put the proportion of voting-age Americans without state-issued photo IDs at between 6 and 12 percent.

Because Indiana's Bureau of Motor Vehicles (BMV) issues IDs without charge, Stevens wrote, "For most voters who need them, the inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting."

However, the BMV requires documents including official birth certificates, which can present a significant cost burden for poor people, and often involve weeks' of waiting.

Scalia wrote that the burdens involved in securing a state-issued ID could not be considered severe if they were "ordinary and widespread burdens." Rather, he insisted, burdens could be considered severe only when they were "so burdensome as to be virtually impossible to satisfy."

This argument sums up the position of the right-wing clique on the court that Scalia heads of overt hostility to the constitutionally

guaranteed right to vote. He, reflecting the real attitude of the forces who are pushing voter ID laws, wants to reverse the traditional bias that gives the benefit of the doubt to the voter, and instead make it easier for the state to suppress voting rights.

Indiana's law, he wrote, "draws no classifications, let alone discriminatory ones... Nor are voters who already have photo identifications exempted from the burden, since those voters must maintain the accuracy of the information displayed on the identifications, renew them before they expire, and replace them if they are lost."

Scalia concluded that the challengers' "premise is irrelevant, and... the burden at issue is minimal and justified." He added: "That the state accommodates some voters by permitting (not requiring) the casting of absentee or provisional ballots is an indulgence—not a constitutional imperative that falls short of what is required."

In his dissent, Breyer disagreed with the majority's assessment of the burdens as insignificant, pointing out that the ID requirement was effective immediately, rather than coming into effect over a transitional period. However, his opinion was conciliatory toward the major issue of constitutionality. "I share the general view of the lead opinion insofar as it holds that the Constitution does not automatically forbid Indiana from enacting a photo ID requirement," he wrote.

Souter, in a dissenting opinion that was joined by Ginsburg, called into question the basis for the law itself, noting that a state cannot burden the right to vote "merely by invoking abstract interests" of preventing fraud "be they legitimate... or even compelling." Rather, the state must make a "factual showing that threats to its interests outweigh the particular impediments it has imposed." Indiana, Souter wrote, "has hardly even tried."

Indeed, the court placed no requirement on Indiana to prove the need for the restrictions in the name of either preventing fraud or implementing "election modernization," as the law has been variously justified. On the other hand, the court based its ruling against the law's challengers on the claim that their petitions did not satisfy the demand for statistically precise estimates of voter disenfranchised by the new law.

Souter noted that estimates of disenfranchisement were available to the court. Travel costs and fees entailed in securing an approved ID were documented, and, Souter wrote, "Poor, old, and disabled voters who do not drive a car, however, may find the trip prohibitive" especially considering the ratio of license branches to voting precincts in the state. For example, Marion County, which includes Indianapolis, has more than 900 voting precincts, but only 12 BMV branches.

"The burden of traveling to a more distant BMV office rather than a conveniently located polling place is probably serious for many of the individuals who lack photo identification," Souter wrote. "They almost certainly will not own cars... and public transportation in Indiana is fairly limited." The state's Department of Transportation reported in 2007 that more than a quarter of Indiana counties had no public transportation systems at all, and only a fifth of counties operate countywide systems.

The law's backers have justified restrictions as a way to prevent potentially fraudulent voters from taking advantage of the state's

bloated voter checklist, which has as many as 41 percent more names than there are eligible voters. Souter commented that with this rationale, "The state is simply trying to take advantage of its own wrong."

The pretext of fighting voter fraud has been increasingly employed by the right wing since the disputed outcome of the 2000 presidential election to turn back voting rights and thwart the turnout of poor and minority populations. As came to light last year in the Bush administration's US attorney firing scandal, the Republican Party, the Justice Department and the White House were directly instigating false prosecutions of "vote fraud" cases before the 2004 and 2006 elections in order to lower voter turnout and intimidate Democratic candidates and voter registration advocates.

Numerous so-called "election reform laws" that have been implemented around the country in the past several years were first introduced in Florida after the 2000 election debacle. These laws—"voter responsibility" requirements, prohibitive fines against volunteer voter registration groups for late filing, "no match, no vote" provisions regarding the correspondence of personal identification and state records, and others—have only made poor and minority working class voters more easily booted off the voting rolls and turned away at the polls.

The crisis over the 2000 presidential election was not the result of individual voter fraud. Rather, it was the result of a systematic drive by the Bush campaign, the Republican Party and the governor of Florida, George Bush's brother Jeb Bush, to suppress voter turnout in minority and working class areas and falsify the results of the voting. Ultimately, the Republican majority on the US Supreme Court, in an infamous 5-4 decision, blocked a recount of votes that had been sanctioned by the Florida State Supreme Court in order to hand the presidency to Bush.

The theft of the 2000 election was a turning point in the assault on democratic rights in the United States. Since then, under cover of talk about "reforming" the electoral process, the right to vote and have one's vote counted has come under further attack. Monday's ruling by the Supreme Court legitimizes this attack on the most basic of constitutional rights.



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