US appeals court upholds photo ID provision of discriminatory Arizona voting law

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Last week, an eleven-judge "en banc" panel of the United States Court of Appeals for the Ninth Circuit—which covers the western states—upheld the provision of an Arizona law requiring voters to produce a valid, current photo identification when casting ballots.

Without any dissent, the Ninth Circuit rejected the claim that requiring people to purchase an identification card, such as a driver's license, before casting a ballot violated the constitutional ban on poll taxes. All but one judge voted to uphold the law despite the evidence that it discriminated against Latino voters.

So-called "voter-ID" laws are the principal weapon being used in an intensifying national campaign to suppress voting rights, which gained momentum when the Supreme Court engineered the theft of the 2000 presidential election for George W. Bush by ordering a halt to the counting of Florida ballots on spurious legal grounds, calling the very right to vote for president into question. (See: "The 2012 elections and the assault on voting rights in the US.")

Studies show that voter-ID laws—which were unknown in the United States prior to the 2006 election—disproportionately impact young and low-income voters. Like other onerous and unnecessary voting requirements, they are subject to abuse and discriminatory application at polling places.

In a reactionary 2008 ruling, *Crawford v. Marion County Election Board*, the Supreme Court upheld a voter-ID law in the state of Indiana, in part relying on a provision that required the state to provide free voter identification cards to individuals without a driver's license or other government identification cards.

The Arizona plaintiffs, a coalition of individuals and organizations, predominantly representing Latino and Native American voters, challenged the Arizona law because the requirement that voters must pay for some form of photo identification distinguished their case from *Crawford*. This in effect imposes a poll tax, prohibited by the Twenty-Fourth Amendment to the US Constitution, which was ratified in 1964 to protect the rights of black voters in the South. The plaintiffs also produced data showing that the voter-ID law had a discriminatory impact on Latino voters.

Judge Sandra Ikuta, appointed by George W. Bush in 2006, summarily dismissed the plaintiffs' claim that "because some voters do not possess the identification required under [the Arizona law], those voters will be required to spend money to obtain the requisite documentation, and that this payment is indirectly equivalent to a tax on the right to vote."

"Although obtaining the identification...may have a cost," Ikuta wrote, "it is neither a poll tax itself (that is, it is not a fee imposed on voters as a prerequisite for voting), nor is it a burden imposed on voters who refuse to pay a poll tax."

This is nothing but doubletalk. Many people—especially the young, the old and the infirm—live without driving, and have no need for a photo ID. There should be no requirement to vote other than an affirmation of legal qualification by the voter. The rare instances of voter fraud at the polls can be addressed easily through criminal prosecutions. Not one of the ten other judges hearing the case dissented on this point, however.

Judge Harry Pregerson, a liberal appointed by Jimmy Carter in 1979, dissented on the basis that the voter-ID requirement discriminated against Latino voters, however. He cited data showing that "in the 2006 general election, Latino voters comprised between 2.6% and 4.2% of the voters who turned out to vote, but Latino voters cast 10.3% of the ballots that went

uncounted because of insufficient identification."

Pregerson blasted the majority for ignoring the interaction between the voter-ID requirement and "social and historical conditions" which "cause an inequality in the opportunities of Latino voters to cast their ballots."

Pregerson recounted the discrimination against Latinos in Arizona that "existed during most of the twentieth century."

"After Arizona attained statehood in 1912, the new state government engaged in an anti-immigrant campaign characterized by a series of proposals aimed at restricting the political rights of Mexican immigrants and limiting their right to work," Pregerson recounted. "In 1914, the Arizona legislature enacted the 'eighty percent law,' which stated that eighty percent of the employees in businesses that had five or more employees had to be 'native-born citizens of the United States.'"

"Segregation of Latinos in housing and public accommodations was also common in Arizona during most of the twentieth century," Pregerson continued. "In the years immediately following World War II, the city of Phoenix segregated Latino veterans in separate housing units. Movie theaters, restaurants, and stores frequently excluded Latinos or required Latinos to sit in segregated areas. Public parks and swimming pools were also segregated. A particularly notorious example of this segregation occurred in Tempe, where Latinos were only permitted to use the public swimming pool the day before the pool was drained."

Finally, Pregerson noted, "History has also shown that when a Latino voter approaches the polling place but is stopped by a person perceived to be an authority figure checking for identification, there's something intimidating about that experience that evokes fear of discrimination. This intimidation has the effect of keeping Latino voters away from the polls."

Pregerson could have added, but chose not to do so, that one Republican Party functionary found intimidating Latino voters in 1964 at a Phoenix, Arizona, polling place was none other than William H. Rehnquist, who as Chief Justice of the United States presided over *Bush v. Gore*, and the theft of the 2000 presidential election.

The Ninth Circuit did rule in the plaintiffs' favor on one aspect of the new law, however, striking down a separate provision requiring people to produce "proof of citizenship" when registering to vote.

Rather than exposing the provision as a blatant attack on the democratic rights of Latinos, the Ninth Circuit made a narrow ruling that Arizona's proof-of-citizenship requirement was preempted by the National Voter Registration Act of 1993 (NVRA), which provides forms for states to use when registering voters for federal elections.

Alex Kozinski, a right-wing Reagan appointee with an undeserved reputation as a legal intellect, concurred in the ruling, but invited the Supreme Court to accept review in the case and change the law on federal election preemption.

"The fact remains that the Supreme Court has never articulated any doctrine giving deference to the states under the Elections Clause," he wrote, referring to the Article I provision of the Constitution granting Congress the power to regulate federal elections. "A case such as ours, where the statutory language is unclear and the state has a compelling interest in avoiding fraudulent voting by large numbers of unqualified electors, presents a far more suitable case for deciding whether we should defer to state interests. But only the Supreme Court can adopt such a doctrine," Kozinski concluded.

The claim that onerous requirements imposed by voter-ID and proof-of-citizenship are necessary to protect against voter fraud has never been proven anywhere. What is clear, however, is that such laws are promoted by the Republican Party to bar from the polls poor and minority voters who tend to vote heavily in favor of Democratic candidates.

More important than the transparent partisan goals is the abandonment by the judiciary, including supposedly liberal bastions such as the Ninth Circuit, of any defense of fundamental democratic principles, including the right to vote itself.