

US court ruling upholds state efforts to disenfranchise voters

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A federal judge has ordered the federal agency established to help states increase turnout in elections to provide funding for efforts by two states, Kansas and Arizona, which are seeking to erect new barriers to voting.

District Judge Eric Melgren issued the ruling Wednesday, ordering the US Election Assistance Commission (EAC) to help the two states enforce so-called “proof of citizenship” laws, which require written proof of citizenship in order to vote in state and local elections.

The EAC can appeal the ruling to the Tenth Circuit Court of Appeals in Denver, but an agency spokesman said no decision had been made about further legal action.

The federal government does not require written proof of citizenship for voting in federal elections. The registration form sponsored by the EAC requires only that prospective voters sign a statement declaring they are citizens. Anyone who swears falsely risks prosecution.

Right-wing Republican state governments in Kansas and Arizona have spearheaded efforts to put obstacles in the path of low income voters, blacks and other minorities, who tend to vote for Democratic candidates. These voters are less likely to have the photo IDs and other documents required by restrictive voter ID laws. They can be challenged at the polls by Republican precinct workers, or intimidated into staying away on Election Day entirely.

The case decided by the federal court Wednesday concerned laws adopted in both states to require voters registering for the first time to provide birth certificates, passports or other documentation to prove their US citizenship. In practice, such requirements are enforced largely with regard to new voters who “look”

foreign—i.e., people of Hispanic or Asian ancestry.

The top election officials in the two states, Kansas Secretary of State Kris Kobach and Arizona Secretary of State Ken Bennett, sued the EAC after it refused to add state-specific instructions to its national voter registration form. They had threatened to establish separate voter rolls in each state—one based on the more restrictive franchise for state and local elections, the other based on the EAC’s model registration form for federal elections.

On the basis of Wednesday’s ruling, the two states will not establish separate voting rolls, but the practical effect will be essentially the same: a two-tier system in which thousands of people who are qualified to vote in federal elections will be barred from voting in state and local elections. In Kansas, this will affect an estimated 16,000 voters, in Arizona, at least 2,000.

In practical terms, as both the judge and the authorities in Kansas and Arizona well know, the discriminatory treatment of voters who lack proof of citizenship will lower the turnout among workers, minorities and poor people for federal elections as well.

Some of the most common reasons for not having a birth certificate or passport are rural or foreign birth, extreme poverty, and loss of documents due to house fires, evictions or flight to avoid domestic abuse—all conditions that are more common among poor and working class voters than among wealthier layers of the population.

A recent study by the Brennan Center for Justice at New York University found that 7 percent of Americans lack birth certificates—meaning that if the Kansas-Arizona precedent spreads throughout the country, as many as 10 million citizens will be denied the right to vote.

Last June, the US Supreme Court struck down part of

the Arizona proof-of-citizenship law, the portion that applies to federal elections, on the grounds that the state had no jurisdiction there. But the high court allowed the law to stand as it relates to state and local elections, and the present case arises out of the state's efforts to enforce the voting restrictions. The Kansas voter ID law took effect last year, and the two states joined forces in the current legal action.

Kansas Secretary of State Kobach gloated after the lower court decision, declaring it “a win for states’ rights,” adding, “This is a really big victory, not just for Kansas and Arizona, but for all 50 states. Kansas has paved the way for all states to enact proof of citizenship requirements.”

Kobach has been the spearhead of anti-immigrant efforts by the ultra-right nationwide, repeatedly suing the federal government in an effort to increase the already gargantuan number of deportations carried out by the Obama administration. But his attack on voting rights is directed not only at immigrants. He recently traveled to Alaska to help draft a voter ID law there that would have its most dramatic impact on Alaska natives—the people who have the longest history of residence in that state—who can drive on tribal land without photo IDs and frequently did not possess a state driver's license.

The suit against the EAC originates in right-wing efforts to reverse the impact of the 1993 National Voter Registration Act, the so-called “motor voter” bill, which simplified voter registration procedures by allowing people to register to vote at state offices where they obtain their driver's licenses. The states were required to use a federal voter registration form that was the same across the country. The law resulted in a significant increase in registration of young people and minority and other working class voters.

The Election Assistance Commission was established in the wake of the stolen presidential election in 2000 as a sop to widespread outrage over the anti-democratic practices of the Florida state election authorities. Among its responsibilities is the drafting of the federal voter registration form and supervision of its use by the states in order to promote wider access to the polls.

The half-hearted character of this effort is demonstrated by the fact that the Democratic-controlled Senate has failed to confirm any of the four nominations to the EAC from the Obama White House,

leaving an acting director to run it. Kansas and Arizona sought to challenge this official's overall authority, in addition to challenging her refusal to help them restrict the voter rolls, but the judge declined to rule on that issue.

Judge Melgren is a reactionary who was a Bush administration appointee as US attorney for Kansas during the period when White House political adviser Karl Rove was demanding that US attorneys move forcefully against alleged “voter fraud”—i.e., act to depress voter turnout in minority and working class neighborhoods. Bush nominated Melgren to fill a vacancy on the Federal District Court in Wichita, Kansas, and a Democratic-controlled Senate rubber-stamped the nomination in September 2008 by a unanimous vote.

His decision is entirely in the Scalia-Thomas school of starting with the desired (and politically motivated) conclusion, and then working backwards to find a legal basis for it. The reasoning in his decision is particularly specious.

Melgren held that “Congress has not pre-empted state laws requiring proof of citizenship through the National Voter Registration Act.” Given that the NVRA was passed in 1993, and Arizona's law was passed in 2004, and the Kansas law even later, an argument based on the failure of the NVRA to foresee and prohibit future state actions is absurd.

As for the claims that the voter ID laws are necessary because of widespread voter fraud, this is a complete fabrication by the ultra-right. US elections are rigged, but not by ineligible voters flocking to the polls. The political system is grossly undemocratic because of the two-party system, which limits effective political choice to picking one of two virtually identical right-wing “alternatives,” as well as the dependence of both parties on the vast outpouring of corporate cash that determines most elections.



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