Supreme Court rejects challenge to Wisconsin voter identification law

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Last week, the Supreme Court declined to review a federal appeals court decision upholding Wisconsin's antidemocratic "Voter ID" law.

Wisconsin's voter identification regime, championed by Republican Governor Scott Walker, is among the most restrictive in the country. The law was enacted in 2011, the same year that Walker confronted mass protests against his administration's assault on education, social services, and workers' wages and pensions. The law, presented as a measure to combat non-existent "voter fraud," is expected to disenfranchise hundreds of thousands of voters.

A federal district court struck down the Wisconsin law as unconstitutional in April of last year, but a divided appeals court reversed the district court's decision and upheld the law on January 7. The Supreme Court issued its decision on March 24.

Under the Wisconsin law, known as "Act 23," voters are required to produce one of a narrow set of acceptable forms of identification in order to vote. In many cases, voters simply do not have any of these forms of identification, and obtaining the required identification can be difficult and expensive– especially where there are errors in the state government's own records.

The American Civil Liberties Union (ACLU) cited the example of Shirley Brown, an elderly African American woman who was born at home and was never issued a birth certificate. "Brown, who had voted in Wisconsin for decades, was denied an ID because she did not have a birth certificate. DMV [the Department of Motor Vehicles] rejected a statement from her elementary school attesting to her birth, even though Medicare accepted the statement."

Another voter, Eddie Lee Holloway Jr., was denied an ID because his birth certificate read "Eddie Junior Holloway" instead of "Eddie Lee Holloway Junior."

The Supreme Court is not required to decide every appeal on the merits. Instead, appellants must file requests for their cases to be heard, called petitions for writ of certiorari. The votes of four of the nine justices are required to grant a petition, after which the case is briefed, argued, and decided on the merits. If the petition is denied, then the decision of the lower appellate court stands.

Denial of certiorari is frequently the mechanism by which reactionary rulings by the lower federal appellate courts quietly take effect, largely obscured from public view.

The lawsuit, *Frank v. Walker*, was filed in 2011 by the ACLU, the National Association for the Advancement of Colored People (NAACP) and other organizations. Federal district judge Lynn Adelman, who first heard the case, came to the conclusion that the Wisconsin law violated the constitution's Equal Protection Clause as well as Section 2 of the Voting Rights Act.

The Equal Protection Clause, part of the 14th Amendment and ratified in the aftermath of the Civil War, provides that no state can deny to any person "the equal protection of the laws." The Voting Rights Act of 1965, passed nearly 100 years later, in the course of the Civil Rights upheavals, contains positive prohibitions on categories of state and local legislation that interfere with the right to vote or that have a racially discriminatory impact.

Judge Adelman held that "voter fraud," the ostensible reason for the Wisconsin legislation, was a sham pretext. "The evidence at trial established that virtually no voter impersonation occurs in Wisconsin. The defendants [state officials] could not point to a single instance of known voter impersonation occurring in

Wisconsin at any time in the recent past… It is absolutely clear that Act 23 will prevent more legitimate votes from being cast than fraudulent votes."

Judge Adelman pointed out that the law will disenfranchise enough voters to affect the outcome of elections. Approximately 300,000 otherwise eligible Wisconsinites were without the necessary identification under the law, while the 2010 gubernatorial election had been decided by about 125,000 votes.

The Seventh Circuit Court of Appeals reversed Judge Adelman's decision, pointing to the Supreme Court's decision in 2008 upholding a similar regime in Indiana.

The ACLU responded to the Supreme Court's refusal to hear the case last week by immediately filing a new federal lawsuit seeking to delay the implementation of Act 23 and seeking to permit voters to use other categories of identification. State officials subsequently agreed that the law would not go into effect in the upcoming state elections in April.

There are, of course, shameless factional interests behind the Republican-led effort to enact "voter identification" laws throughout the country. These laws are a barely disguised effort to disenfranchise large numbers of poor workers, elderly people, students, people with disabilities, and the homeless, who the proponents of such laws expect to be more likely to vote Democrat.

However, important historic and democratic issues are involved in the drive to introduce laws like Act 23 in Wisconsin. After all, the Supreme Court's refusal to hear the Wisconsin voting case falls during an especially significant year: the 50th anniversary of the Voting Rights Act.

As the recent film *Selma* illustrated effectively, citizens in the Jim Crow south enjoyed the nominal right to vote under federal law. However, the local reactionaries had erected so many procedural obstacles—fees, tests, obscure voting locations and hours, record-keeping requirements, early deadlines, and other arbitrary restrictions—that casting a ballot could be impossible for even the most determined voter.

From a legal standpoint, one of the central democratic reforms that emerged from the struggles of the Civil Rights period was the Voting Rights Act of 1965. The Voting Rights Act was designed to sweep aside all of these fetters, as well as to restore public confidence in a political system that was widely discredited.

The Voting Rights Act targeted state and local regulations on voting, regarding them as presumptively illegitimate, and it banned many such regulations outright. It established a strict system of federal oversight that required many areas with a history of voter disenfranchisement to obtain advance clearance for any proposed regulations.

The political right has always chafed under the Voting Rights Act, regarding it as a thorn in their sides that should be removed as soon as possible. Beginning as early as 1972 with the appointment of later Chief Justice William H. Rehnquist to the Supreme Court, the essential legislation of the Civil Rights period has been progressively weakened, culminating in recent years with major Supreme Court decisions dismantling or gutting essential provisions.

By infiltrating arbitrary restrictions on the right to vote back into the electoral system, the Wisconsin law is reactionary in the precise sense of the word. It is a direct attack on the reforms of the Civil Rights period and an attempt to re-introduce laws that were abolished in the course of bitter and prolonged struggles.

Fifty years after the Voting Rights Act, the US Supreme Court refuses to enforce it. This occurs as the American ruling class is rolling back political and social reforms across the board at an accelerating pace.

The author also recommends:

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