

High court to take on voter ID case: Lower court rulings on photo requirements have split, just like political opinions, so decision on Indiana's strict rule is important.

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Washington — The Supreme Court will open the new year with its most politically divisive case since *Bush v. Gore* decided the 2000 presidential election, and its decision could force a major reinterpretation of the rules of the 2008 contest.

The case, to be argued Jan. 9, presents what seems to be a straightforward and even unremarkable question: Does a state requirement that voters show a specific kind of photo identification before casting a ballot violate the Constitution?

The answer so far has depended greatly on whether you are a Democratic or Republican politician — or even, some believe, judge.

"It is exceedingly difficult to maneuver in today's America without a photo ID (try flying, or even entering a tall building such as the courthouse in which we sit, without one)," Circuit Judge Richard Posner, a Ronald Reagan appointee, wrote in deciding that Indiana's strictest-in-the-nation law is not burdensome enough to violate constitutional protections.

His colleague on the U.S. Court of Appeals for the 7th Circuit, Bill Clinton appointee Terence Evans, was equally frank in dissent. "The Indiana voter photo ID law is a not-too-thinly veiled attempt to discourage Election Day turnout by certain folks believed to skew Democratic."

Party vs. party

For justices still hearing from the public about their role in the 2000 election, the partisan implications of the issue are hard to miss.

The case has pitted Democrats against Republicans, conservative legal foundations against liberal ones and civil rights organizations against the Bush administration.

"Voter ID laws have become the most politicized" of governments' efforts to try to limit fraud and voting irregularities, said Richard Hasen, an election-law expert at Loyola Law School in Los Angeles, who filed a brief supporting the law's challengers. "It's in the nation's best interest for the court to resolve it."

Hasen is one of those who point out that the partisan division on voter ID laws often extends to the judiciary. Not only did the 7th Circuit's 2-1 vote to uphold Indiana's law break down along the lines of which party nominated the judges, so, with one exception, did the full court's decision not to reconsider the ruling. Michigan's Supreme Court justices — who are elected in partisan races — upheld that state's voter ID law, with the five Republican jurists voting to support it and the two Democrats opposing it.

Law spreading

The Indiana case seems to offer a perfect example. The state's GOP-led legislature passed the law in 2005 requiring voters to have ID, even though the state had never prosecuted a case of voter impersonation.

Democrats challenged the law as unconstitutional, but they have not produced a person turned away from voting because of the law.

What is undisputed is that the number of states, including Georgia, with such laws is growing. The Supreme Court made it clear in a 1992 case involving write-in candidates in Hawaii that states have leeway in regulating voting. Subjecting every restriction to constitutional "strict scrutiny" standards would conflict with the states' ability to run efficient elections, the court said.

In 2006, the court agreed a voter-approved initiative in Arizona that required voters to show proof of citizenship could go into effect.

The Indiana law requires voters to show a government-issued photo ID that has an expiration date, such as a driver's license or a passport. Nondrivers can receive an identification card from the Bureau of Motor Vehicles.

Voters without ID may cast provisional ballots but then must appear before their county clerk or board of elections within 10 days. There, they must show a photo ID or at least two other forms of identification, such as a certified birth certificate or naturalization papers.

Georgia's law, passed in 2006, also requires voters to bring one form of photo identification to the polls.

Most other states that call for photo IDs are less strict than Indiana, or make it easier to cast provisional ballots.

Virginia, for instance, allows voters to sign sworn statements attesting to their identity. Maryland and the District of Columbia do not require voters to show a photo ID, except for first-time voters who registered by mail.

"Virtually everything you do, you have to show a photo ID," said Indiana Secretary of State Todd Rokita, a Republican, and the "sacred civic transaction" of voting should be no different.