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Why make it hard to vote?

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In 2000, the Supreme Court in *Bush vs. Gore* intervened in politics and decided the presidential election. The court heard arguments last week in another case dealing with election law, *Indiana Democratic Party vs. Rokita*, and its decision could turn out to be as influential as *Bush vs. Gore*.

The case deals with a law that took effect in Indiana in 2005, requiring people who wanted to vote in person to show a government-issued photo ID. The Indiana Democratic Party filed a lawsuit trying to stop the law, claiming that it unfairly burdened the right to vote of some, especially the poor and the elderly. Many states have adopted or are contemplating such restrictions, so the court's decision will have ramifications far beyond Indiana.

The 7th Circuit U.S. Court of Appeals, in an opinion written by Judge Richard Posner, upheld Indiana's law, finding that the burden a photo identification requirement was not very onerous, and that there was little evidence that requiring a photo ID would actually prevent many voters from voting.

Posner argued, moreover, that the "benefits of voting to the individual voter are elusive" because "a vote in a political election rarely has any instrumental value." (Posner is right that one vote rarely tips an election, though one might then ask why anyone would risk years in prison to commit unprofitable fraud.)

The Supreme Court seems likely to uphold Posner's decision, if not all of his reasoning.

Posner's strongest argument might be summed up as, "What's the big deal?" Photo identification is part of everyday life. We need it for boarding an airplane or using a credit card. Why should we worry about requiring it for people to vote? If some people don't want to go to all the trouble, then that's their problem. And if the state of Indiana thinks that photo identification is important to stop fraud, that is justification enough.

But there's a larger issue here: How hard should we make it for citizens to exercise their fundamental right to participate in our democracy? No one, of course, is arguing for getting rid of all requirements for the right to vote. Those worried about the Indiana law are only asking whether piling on restrictions does enough (or any) good when it will predictably deter otherwise qualified people from going to the polls.

Between 6% and 10% of eligible citizens lack the requisite identification. Many people might find this number of people without photo identification difficult to believe, though it is a well established estimate. But how do they board airplanes or use credit cards? The answer, of course, is that they don't.

And this is precisely the point. The burden of such voting restrictions will fall overwhelmingly on people who already find it difficult to participate in many social and political functions. Incredulity or indifference to such considerations - if it is not rooted in cynical partisanship - amounts to democracy's version of "Let them eat cake."

Even if photo ID requirements would stop some people who shouldn't be voting (although the evidence here is quite slim), we still have to ask whether it's worth it to deter those people who do deserve to vote. We might recall the famous adage that it is better to let 100 guilty people go free than to jail one innocent person. In the same way, we ought to consider it generally better to risk some voter fraud in order to secure as much legitimate participation as possible. The Indiana law turns this logic on its head: It is likely to prevent many legitimate voters from voting in order to prevent the rare case of individual fraud.

Voting is properly regarded as one of our most sacred rights, even as the foundation of all our other rights. If being the decisive vote were the only value people found in voting, it is hard to see why 100 million Americans would show up and vote. Giving everyone a say in how the country is run is the basis of our democracy - and one thing we shouldn't be afraid of this election season is having too much democracy.

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